

In re Application of Keshavaraj
Application No. 10/630,403

REMARKS

The Pending Claims

Claim 20 was canceled, without prejudice or disclaimer of the subject matter recited therein, in Applicants "Response to Office Action" dated August 23, 2005. Thus, claims 1-19 currently are pending in the application.

Summary of the Office Action

The Office Action rejects claims 1-19 under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,666,475 (Kippschull) (hereinafter "the Kippschull '475 patent").

Discussion of the Rejection

As noted above, the Office Action rejects claims 1-19 as allegedly anticipated by the Kippschull '475 patent. Applicants respectfully traverse this rejection.

The Kippschull '475 patent does not appear to teach or suggest an airbag in which the anterior and posterior portions of a second panel are not coextensive with the anterior and posterior portions of a first panel. The Kippschull '475 patent states that "the outer dimensions of the fabric layers 58 and the intermediate fabric strip 60 essentially correspond to the outer dimensions of the fabric layer 56" (the Kippschull '475 patent at col. 7, lines 62-64). Thus, the Kippschull '475 patent does not appear to disclose the subject matter recited in the pending claims and, therefore, the pending claims cannot properly be considered anticipated by the Kippschull '475 patent.

Notwithstanding this apparent deficiency in the Kippschull '475 patent, the Office Action asserts that the *anticipation* rejection is proper because the subject matter recited in the claims "would have been obvious to one having ordinary skill in the art at the time the invention was made." First, Applicants respectfully submit that subject matter cannot properly be rejected as anticipated if, as acknowledged in the Office Action, the cited reference fails to disclose all of the elements of the claimed invention.

Second, Applicants respectfully submit that the Office Action has failed to identify any teaching that would have motivated one of ordinary skill to modify the subject matter of the Kippschull '475 patent in such a way as to arrive at the presently claimed invention. In support of its obviousness assertion, the Office

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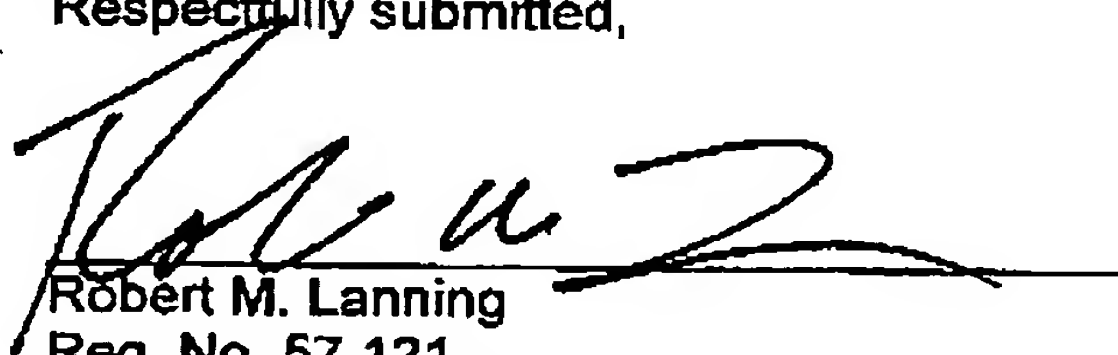
Action suggests that the motivation would have derived from the alleged fact that "a slight variation of the anterior and posterior portions of the panels would not change the function of the device." However, this reasoning disregards the Kippschull '475 patent's clear teaching that "the outer dimensions of the fabric layers 58 and the intermediate fabric strip 60 essentially correspond to the outer dimensions of the fabric layer 56." Moreover, assuming that the Office Action's alleged fact is true, the mere fact that variation in the panels would not affect function is not sufficient to show that one of ordinary skill in the art *would have been motivated* to modify the disclosure of the Kippschull '475 patent. At best, such a fact could show that one of ordinary skill in the art *might have been motivated* to modify the disclosure. However, the proper measure of obviousness is not what the ordinary artisan might have done, but what the ordinary artisan would have been motivated to do. In the absence of a proper teaching or suggestion which would have motivated the ordinary artisan to arrive at the claimed invention, the invention cannot properly be considered *prima facie* obvious over the Kippschull '475 patent.

Accordingly, Applicants respectfully submit that the rejection over the Kippschull '475 patent is improper and should be withdrawn.

Conclusion

In view of the foregoing, the application is considered in proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone interview would expedite prosecution of the instant application, the Examiner is invited to call the undersigned.

Respectfully submitted,



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